



CHAIRMAN

Federal Communications Commission

Washington, D.C

September 15, 2003

The Honorable John M. Shimkus
U S House of Representatives
513 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Shimkus

Thank you for your letter of August 20, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July *Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension, which you note in your correspondence, will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', with a large, sweeping loop at the end.

Michael K. Powell

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)
)
)
)
)
)

ORDER ON RECONSIDERATION

Adopted: August 18, 2003

Released: August 18, 2003

By the Commission

1 On July 3, 2003, the Federal Communications Commission (Commission) released a Report and Order revising many of its telemarketing and facsimile advertising rules pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).¹ Pursuant to Section 1.108 of the Commission's rules,² on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also extend, until January 1, 2005, the effective date of amended rule 47 C.F.R. § 64.1200(a)(3)(i).³

2 In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers.⁴ The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements.⁵ Instead, the Commission

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, Report and Order (rel. July 3, 2003) (*Report and Order*). A summary of this Report and Order was published in the Federal Register on July 25, 2003 (68 Fed. Reg. 44144).

² 47 C.F.R. § 1.108.

³ Amended rule 47 C.F.R. § 64.1200(a)(3)(i) provides that "a facsimile advertisement is not 'unsolicited' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

⁴ *Report and Order* at para. 189.

⁵ *Id.*

JOHN M. SHIMKUS

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BAITIC CAUCUS
Caucus Chairman

The Honorable Michael K. Powell

Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

Thank you for delaying until January 1, 2005 the implementation of the FCC's new facsimile advertising rules in compliance with the Telephone Consumer Protection Act of 1991. While protecting consumers from unsolicited faxed advertisements is extremely important, I am concerned that the recent proposed changes to the rules governing facsimile advertising would impose unnecessary compliance burdens, both in terms of time and cost, on businesses and trade associations.

To my understanding, the new rules would require businesses and trade associations to obtain the express written and signed consent of their customers and members before they could send facsimile advertisements to them. For the past eleven years, an established business relationship (not written and signed consent) provided businesses and trade associations with the necessary express permission to send faxed advertisements to their customers and members.

Since many businesses and trade associations rely heavily on facsimile advertising as a cost-effective means of communicating with their customers and members, the new rules would force businesses and trade associations to reach each of their customers and members, by some means other than by facsimile, to get their written and signed consent. I believe that the cost of compliance with this new requirement will be significant and not result in an additional benefit to businesses or trade associations.

Therefore, I strongly urge the Commission to revisit this portion of the rule in order to provide businesses and trade associations with an opportunity to work on a solution to this issue. Thank you for your attention to this matter.

Sincerely,

JOHN SHIMKUS
Member of Congress

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Washington, DC 20515-1319

August 20, 2003

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